

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SMILES SERVICES LLC et al.,

Plaintiff,

v.

RAYMOND L. FRYE et al.,

Defendant.

CASE NO. 3:23-cv-05392-DGE

ORDER GRANTING STIPULATED
MOTION FOR PRELIMINARY
INJUNCTION (DKT. NO. 22)

This matter comes before the Court on the parties' Stipulated Motion for Stipulated Preliminary Injunction. (Dkt. No. 22.) The Court has reviewed the motion and the parties' stipulations, and the Court hereby GRANTS the parties' Stipulated Motion for Stipulated Preliminary Injunction. The Court further ORDERS that the following terms shall govern the parties' conduct until this case is dismissed or the Court otherwise orders this Stipulated Preliminary Injunction dissolved or modified:

1. Defendants Frye, Dentists-Owned Clinics, LLC ("DOC") and Raymond L. Frye II DMD, P.L.L.C. ("Frye DMD") ("Defendants") and Defendants' employees, owners (including

1 Jena Ewald and Brian Daltoso), agents, and related business entities owned, directly or
2 indirectly or with any beneficial interests, by Frye, including Frye & Correll P.L.L.C.,
3 (together with Defendants, collectively the “Restricted Parties”) shall not use, disclose, or
4 otherwise distribute any confidential or trade secret information belonging to Plaintiffs
5 while this Stipulated Preliminary Injunction remains in effect. Within ten (10) days of
6 the entry of this Stipulated Preliminary Injunction, Defendants will identify all
7 information in their possession, and any transmission of such property and information to
8 other parties, search for and return all Plaintiffs’ property and information in their
9 possession, identify all persons to whom such information was disclosed, and securely
10 delete such information from their possession, and shall not retain hard paper copies,
11 images, electronic copies or any other form of reproduction, duplication, or active use,
12 including but not limited to, items such as financial models for reporting, financial
13 reports, employee information, vendor information, practice level operating information,
14 contracts, and related information.

- 15 2. Restricted Parties shall not open, operate, manage, acquire, own, provide services to, or
16 practice dentistry at any dentist clinics or practices within a 10-mile radius of Plaintiffs’
17 dentist clinics existing as of the date this Stipulated Preliminary Injunction is entered.
18 Restricted Parties shall not open, operate, manage, acquire, own, or provide services to
19 any dental service organization or management services organization in the field of
20 dentistry except for Restricted Parties’ operation of DOC, and Restricted Parties shall not
21 expand the operation of DOC beyond dentist clinics owned by Defendants and opened
22 and operated in compliance with the restrictions in this paragraph. Nothing in this
23 Stipulated Preliminary Injunction prohibits Defendants from continuing to operate
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1 Defendants' dentist clinics currently operating in Tacoma and Silverdale, Washington, or
2 opening new clinics that comply with the geographic limitations in this paragraph.
3 Further, nothing in this Stipulated Preliminary Injunction prohibits the continuing
4 operation of the Defendants' dentist clinics, if, after the date of this Stipulated
5 Preliminary Injunction, Plaintiffs open, acquire, or otherwise commence new operation of
6 a dentist clinic within a 10-mile radius of any of Defendants' then-existing dentist clinics,
7 or clinics otherwise opened which, when opened, did not violate the terms of this
8 Stipulated Preliminary Injunction. However, Plaintiffs reserve all rights with respect to
9 claims or damages associated with Restricted Parties' activities and operations of all
10 dental practices, DOC, Frye DMD, or other related business entities owned by Defendant
11 Frye, including Frye & Correll P.L.L.C. Defendants likewise reserve all rights with
12 respect to claims, counterclaims, or defenses Defendants have asserted or may assert
13 against Plaintiffs other than as expressly set forth here.

- 14 3. Restricted Parties will not solicit for care any of Plaintiffs' existing patients. This
15 Stipulated Preliminary Injunction does not prevent immediate family members
16 (dependents, partners, spouses, parents and siblings) of employees of Defendants who
17 wish to transfer their care to Defendants' businesses from doing so, and their doing so
18 shall not constitute a violation of this Stipulated Preliminary Injunction. This Stipulated
19 Preliminary Injunction also does not prevent patients who independently contact
20 Defendants requesting to transfer their care, absent any solicitation, outreach, or
21 interference by Defendants, from transferring their care to Defendants, and Defendants
22 providing care to such patients shall not constitute a violation of this Stipulated
23 Preliminary Injunction.

1 4. Restricted Parties will not solicit, employ, or accept services from any employee, officer,
2 director, or dental service providers (hygienists, dentists, or surgeons) of Plaintiffs while
3 such person is actively providing services to Plaintiffs and, other than as expressly set
4 forth here, in the case of a former employee, officer, director, or dental service providers
5 (hygienists, dentists, or surgeons) within one year of the termination of such person's
6 services to Plaintiffs; provided, however, this one-year post-employment restriction on
7 hiring shall not apply to any individual employee, officer, director, or dental service
8 provider whose employment or continued provision of services with Plaintiffs is
9 terminated for reasons other than the misconduct for the benefit of or by the Restricted
10 Parties. Nothing in this paragraph shall prevent the continued employment of Plaintiffs'
11 former employees already employed by Defendants, or whom have already given notice
12 of their resignation to Plaintiffs, the complete list of whom is as follows:

13 Jena Ewald
14 Brian Daltoso
15 Dr. Mary Correll
16 Dr. Amrit Mattu
17 Sabrina Morris
18 Devin Wenski
19 Laurie Molvar
20 Krystal Melgoza
21 Deb Mason
22 Morgan Buzzell
23 Bernaze Betancourt
24 Dr. William Webley

With respect to Dr. William Webley, the exception in this paragraph does not apply
during Dr. Webley's remaining employment with Plaintiffs, and Dr. Webley shall not
become employed with or provide services to Restricted Parties while he remains
employed by Plaintiffs. Nothing in this paragraph constitutes a waiver of any claim that

1 Plaintiffs may have against Dr. Webley or Defendants as a result of Defendants'
2 employment of Dr. Webley, or a waiver of any defense Defendants may have to any such
3 claim.

4 5. Restricted Parties will instruct their agents, owners, and employees to abide by the terms
5 of this Stipulated Preliminary Injunction and all existing contractual obligations that they
6 have with Plaintiffs.

7 6. Restricted Parties will not aid or abet others to engage in activities on their behalf that
8 violate the terms of this Stipulated Preliminary Injunction or their own existing
9 contractual obligations to Plaintiffs.

10 7. In order for this Stipulated Preliminary Injunction to go into effect, Defendant Frye and
11 the principal representative of Plaintiffs agree that they will have a discussion in good
12 faith (without counsel) about the parties' outstanding issues and potential resolutions of
13 disputes related thereto no later than 5:00 p.m. Central Time on Thursday, May 18, 2023.
14 Plaintiffs and Defendants agree that if Defendant Frye fails to attend this discussion,
15 which shall occur via phone or videoconference, the terms of this stipulation shall be void
16 and Plaintiffs may file a motion seeking to have the Court's stipulated preliminary
17 injunction vacated, if then entered, and that Defendants shall not oppose any such motion.
18 However, provided that Defendant Frye attends the discussion as set forth here, nothing
19 about the content or outcome of the discussion shall serve as a basis to void the parties'
20 stipulations or vacate this Stipulated Preliminary Injunction.

21 8. This Stipulated Preliminary Injunction shall remain in effect until final, appealable
22 adjudication of this matter or otherwise as mutually agreed to by the parties.
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1 9. By agreement of the parties, no security shall be required of Plaintiffs for this Stipulated
2 Preliminary Injunction.

3 10. Nothing in the foregoing shall be construed as a waiver of any substantive claim, defense,
4 or claim for damages in this case, and that the agreement of the parties is solely for
5 purposes of maintaining the status quo during the pendency of this litigation.
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7 Dated this 18th day of May, 2023.

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David G. Estudillo
United States District Judge
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